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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,314	07/15/2005	William J Smirles	3994942	2682
7590		10/02/2008	EXAMINER	
Porter Wright Morris & Arthur 41 South High Street 28th Floor Columbus, OH 43215			STOKLOSA, JOSEPH A	
			ART UNIT	PAPER NUMBER
			3762	
			MAIL DATE	DELIVERY MODE
			10/02/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/542,314	SMIRLES ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	JOSEPH STOKLOSA	3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 08 February 2006.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-9 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-9 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/S/65/06)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 6 and 9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 6, line 3, contains a whereby clause. It has been held that the functional "whereby" statement does not define any structure and accordingly can not serve to distinguish. *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1, and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Owen et al. (US 6,148,233).

7. Owen discloses a portable defibrillator, 10, comprising a housing containing defibrillator circuitry and a disposable electrode assembly, 4, external to the housing. The electrode assembly comprises at least one electrode (31a-31g), a batter, 184, and a connector, 20, as seen in Fig. 3. The connector as power output terminals for connecting the battery to the defibrillator circuitry and a high voltage input terminal for receiving defibrillation voltage to be applied to the electrodes (Col. 16, line 19-40; Fig. 17).

8. With regard to claim 4, Owen discloses at least two defibrillation electrodes and a common housing for the electrodes and battery. Examiner considers integral connector unit combination, elements 20 and 21, to be a common housing for the battery and defibrillation electrode leads. It is of note that as written Claim 4 only requires a common housing associated with the defibrillation electrodes and battery, but does not require the electrodes to be housed within the common housing.

9. With regard to claim 5, Owen discloses a sliding recess for connector unit, 50, to connect to the power supply and connector unit (elements 20 and 21) as seen in Fig. 7B.

10. With respect to claim 6, Owen discloses an upper recess of the housing to accommodate the electrode interface and a deeper recess for housing the battery as seen in Fig. 17.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 2-3 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen et al. as applied above in view of Picardo et al. (US 6,556,864).

14. Owen et al. disclose the invention as claimed but fail to teach the use of a frangible connection between the two defibrillation electrodes adapted to determine the status of the defibrillator.

15. Picardo teaches that it is known to use a key or tether device to turn on an automated defibrillation unit through completion of a circuit when the key or tether is removed as seen in e.g. Col. 2, line 30- Col. 3, line 12; Col. 6, line 5-17 for providing the predictable results of an automatic ON initiation of the device to reduce user error.

16. Owen and Picardo fail to teach using the key or tether with a frangible connection of the electrodes or electrode assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as

taught by Owen with use of key or tether device to turn on an automated defibrillation unit through completion of a circuit when the key or tether is removed, as taught by Picardo, and incorporating the removal of the key or tether to a functional operation of the defibrillator use, such as through a frangible connection that is broken when the electrodes are removed, or wherein the key is tethered and removed when the electrode assembly is removed from the housing stowage for providing the predictable results of an automatic ON initiation of the device to reduce user error through elimination and combination of steps for activating the defibrillator.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH STOKLOSA whose telephone number is (571)272-1213. The examiner can normally be reached on Monday-Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/  
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Joseph Stoklosa  
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9/29/2008